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SERVICE DATE - FEBRUARY 10, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 282 (Sub-No. 20)

RAILROAD CONSOLIDATION PROCEDURES—  
TEMPORARY TRACKAGE RIGHTS EXEMPTION

Decided: January 31, 2003

In this docket, the Board is simultaneously serving and will be publishing a notice of proposed exemption and rulemaking (NPR) in which it proposes to modify its trackage rights class exemption at 49 CFR 1180.2(d). The Board's present rule, codified at 49 CFR 1180.2(d)(7), when invoked, authorizes trackage rights indefinitely, regardless of any durational provision in the trackage rights agreement between the parties. The authorization may be terminated only by obtaining authority from the Board to discontinue service.

If a carrier wishes to obtain an authorization that expires automatically on a certain date, the carrier must file an individual petition for exemption. Unlike a filing invoking the class exemption, which becomes effective in 20 days by rule, the relief sought in a petition may be given effect only by a specific decision of the Board. The preparation and issuance of a such a decision normally takes significantly longer than 20 days.

Carriers seeking authorizations that expire automatically have adopted the practice of filing a notice invoking a class exemption and simultaneously filing a petition asking that the authorization expire on a particular date. The NPR proposes to add to the Board's rules a class exemption for trackage rights that terminate on a particular date, thereby allowing carriers to obtain such rights promptly with a single filing.

In Implementation of the Regulatory Flexibility Act, STB Administrative Matter No. 3, STB Issuance No. 52 (STB served Nov. 8, 2002) (Implementation of the RFA), the Board revised its internal procedures implementing the Regulatory Flexibility Act (RFA) to require, inter alia, that the Director of the Office of Proceedings determine whether a proposed rule will have a significant economic impact on a substantial number of small entities.<sup>1</sup> If the Director determines that the rule will not have such an impact, the Director must issue a "certification of

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<sup>1</sup> These revised procedures were effective on November 14, 2002.

no significant economic impact.” This certification must include a statement explaining the factual basis for the certification.<sup>2</sup>

In accordance with Board RFA procedures, I hereby certify that the proposed rule in this case will not have a significant economic impact on a substantial number of small entities. Rather, by eliminating the need for the requesting party to make a second filing, it will decrease filing costs and increase the efficiency of the regulatory process to the benefit of all filers, including small entities. Moreover, providing temporary trackage rights would not reduce competition. Temporary trackage rights could add service on a line and thereby improve service options or increase competition. Temporary trackage rights proposals that add no service on the line (e.g., overhead, or bridge, service) merely maintain the status quo among carriers and shippers on the line and thus would have no adverse effects for carriers or shippers.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This certification will be published in the Federal Register.
2. This certification will be served on the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>2</sup> If the Director determines that the rule may have a significant economic impact on a substantial number of small entities, the NPR must include an Initial Regulatory Flexibility Analysis (IRFA), and the final rule must include a Final Regulatory Flexibility Analysis (FRFA). These analyses, in general, describe the justification for the Board’s action, any significant alternatives, any mitigating steps that have been or will be taken by the Board, the nature of the impact, and an estimate of the number of entities affected. See Implementation of the RFA, at 5-7.